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EXAMINER

TORRES, MARCOS L

ART UNIT

PAPER NUMBER

2617

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/648,778

Applicant(s)

RANTA-AHO ET AL.

Examiner

MARCOS L. TORRES

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 and 30-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 and 30-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on 8-24-07 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claim Objections

1. Claims 28 and 19 are objected to because of the following informalities: the claims are directed to a computer program product, however the claims depend on a method claim, thereby creating a hybrid claim. It is unclear if the claim is directed to a method or a computer program. Appropriate correction is required.

Response to Arguments

2. Applicant's arguments filed 11-16-07 have been fully considered but they are not persuasive.

3. The 101 rejection is maintained because amended claim 28 still does not show useful and tangible result.

4. Regarding applicant's arguments directed to the difference between a 2-hop network and a cellular communication network; since the claim recites wireless telecommunication system, the two networks can be properly equated.

5. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., fixed base stations) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

6. The rest of the arguments they fall for the same reasons as shown above. The current rejection in record stands.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 28 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention falls in a judicial exception of an abstract idea (claimed computer program) without a practical application by physical transformation and without a useful and tangible result.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2617

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 1-5, 10-16, 19-21, 26-28, 30-40 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) in view of Beyer US007184413B2.

As to claim 1, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses a method for use by a user equipment device and Node Bs of a wireless telecommunication system, the method for enabling Node B based control during soft handover of the maximum data rate allowed for uplink by the user equipment device as indicated by a pointer in the user equipment device, the soft handover resulting in a change of a controlling Node B from a first one of the Node Bs to a second one of the Node Bs, each of the Node Bs for providing commands for control of user equipment devices in at least one respective cell so that the user equipment device in soft handover is simultaneously in at least two cells each possibly controlled by a different one of the Node Bs, the method comprising: and issuing scheduling commands for controlling the pointer in the user equipment device if it is in control, but issuing no such commands if it determines it is not in control of the scheduling cell (see sections 6.3, 7.1.2.5-7.1.3, 7.2.4). 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) does not specifically disclose the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell. In an analogous art, Beyer discloses the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of

the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell (see col. 4, line 62 – col. 5, line 22; col. 17, lines 20–60). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to select a scheduling or master station to orderly use network resources, thereby maximizing resources and preventing data collisions.

As to claim 2, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses a method further comprising: the user equipment device and also the Node B in control of the scheduling cell each synchronizing a respective pointer for indicating the maximum allowed uplink data rate for the user equipment device to a value according to a synchronization procedure (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 3, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses a method wherein according to the synchronization procedure, the Node B sets the pointer it maintains to the data rate used in the uplink of the information indicating the scheduling cell (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 4, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses a method wherein according to the

synchronization procedure, the Node B sets the pointer it maintains to a predetermined value (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 5, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses a method of claim 2, wherein according to the synchronization procedure, both the Node B and the user equipment device set their respective pointers according to predetermined criteria (see sections 7.1.1-7.1.1.3,7.3.2).

As to claims 10 and 26, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses user equipment device, comprising: means for wirelessly communicating with Node Bs of a radio access network in a wireless communication system; a pointer for indicating a maximum allowed rate of uplink to the wireless communication system; means for adjusting the pointer responsive to scheduling commands received from a Node B controlling a cell in which the user equipment device is located; and means for uplinking information indicating as a scheduling cell a particular cell from among a plurality of cells involved in a soft handover, each cell possibly controlled by a different Node B (see sections 6.3,7.1.2.5-7.1.3,7.2.4). 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) does not specifically disclose the user equipment device signaling in uplink information indicating one of the cells as a

scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell. In an analogous art, Beyer discloses the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell (see col. 4, line 62 – col. 5, line 22; col. 17, lines 20–60). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to select a scheduling or master station to orderly use network resources, thereby maximizing resources and preventing data collisions.

As to claim 11, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses user equipment device wherein the user equipment device comprises: means for selecting as a scheduling cell a particular cell from among a plurality of cells involved in a soft handover (see sections 6.3, 7.1.2.5-7.1.3, 7.2.4).

As to claim 12, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses user equipment device wherein the user equipment device comprises: means for determining whether scheduling commands are sent by the Node B controlling the scheduling cell and for disregarding

all scheduling commands sent by other than the Node B controlling the scheduling cell (see sections 6.3,7.1.2.5-7.1.3,7.2.4).

As to claim 13, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses user equipment device as in claim i0, wherein the user equipment device further comprises: means for synchronizing the pointer to a corresponding pointer in the Node B controlling the scheduling cell (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 14, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses user equipment device wherein for synchronization, the user equipment device sets the pointer it maintains to the data rate used in the uplink of the information indicating the scheduling cell (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 19 and 27, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses Node B comprising: means for wirelessly communicating with a user equipment device as an element of a radio access network of a wireless communication system; and means for determining when to assume control of scheduling of the user equipment device and when to cease control of scheduling of the user equipment device based on information up linked by the user equipment device indicating as a scheduling cell a particular cell

from among a plurality of cells involved in a soft handover (see sections 7.1.1-7.1.1.3,7.3.2). In an analogous art, Beyer discloses the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell (see col. 4, line 62 – col. 5, line 22; col. 17, lines 20--60). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to select a scheduling or master station to orderly use network resources, thereby maximizing resources and preventing data collisions.

As to claim 21, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses Node B of claim 20, wherein for synchronization, the Node B sets the pointer it maintains to the data rate used in the uplink of the information indicating the scheduling cell (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 30, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses apparatus for use by a user equipment device, comprising: a pointer for indicating a maximum allowed rate of uplink to a Node B of a wireless communication system controlling a cell in which the user equipment device is located; means for adjusting the pointer in response to scheduling commands received from the Node B; and means for up linking information indicating as a scheduling cell either the cell controlled by the Node B or a cell controlled by another

Node B to which the user equipment is being handed over in soft handover (see sections 6.3, 7.1.2.5-7.1.3, 7.2.4). 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) does not specifically disclose the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell. In an analogous art, Beyer discloses the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell (see col. 4, line 62 – col. 5, line 22; col. 17, lines 20--60). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to select a scheduling or master station to orderly use network resources, thereby maximizing resources and preventing data collisions.

As to claim 31, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses apparatus for use by a Node B of a wireless communication system, comprising: a pointer for indicating a maximum allowed rate of uplink to the Node B by a user equipment device located in a cell controlled by the Node B; means for providing scheduling commands to the user equipment device for adjusting a corresponding pointer in the user equipment device; and means for

determining whether to provide the scheduling commands based on information up linked by the user equipment device indicating as a scheduling cell either the cell controlled by the Node B or a cell controlled by another Node B to which or from which the user equipment is being handed over in soft handover (see sections 6.3, 7.1.2.5-7.1.3, 7.2.4). 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) does not specifically disclose the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell. In an analogous art, Beyer discloses the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell (see col. 4, line 62 – col. 5, line 22; col. 17, lines 20--60). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to select a scheduling or master station to orderly use network resources, thereby maximizing resources and preventing data collisions.

As to claim 32, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses apparatus for use by a user equipment device, comprising: a pointer for indicating a maximum allowed rate of uplink to a Node

B of a wireless communication system controlling a cell[in which the user equipment device is located; and a processor, configured to: adjust the pointer in response to scheduling commands received from the Node B; and uplink information indicating as a scheduling cell either the cell controlled by the Node B or a cell controlled by another Node B to which the user equipment is being handed over in soft handover (see sections 6.3,7.1.2.5-7.1.3,7.2.4). 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) does not specifically disclose the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell. In an analogous art, Beyer discloses the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell (see col. 4, line 62 – col. 5, line 22; col. 17, lines 20--60). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to select a scheduling or master station to orderly use network resources, thereby maximizing resources and preventing data collisions.

As to claim 33, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses user equipment device wherein the

processor is further configured to: select as a scheduling cell a particular cell from among a plurality of cells involved in a soft handover (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 34, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses user equipment device wherein the processor is further configured to: determine whether scheduling commands are sent by the Node B controlling the scheduling cell and to disregard all scheduling commands sent by other than the Node B controlling the scheduling cell (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 35, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses apparatus for use by a Node B of a wireless communication system, comprising: a pointer for indicating a maximum allowed rate of uplink to the Node B by a user equipment device located in a cell controlled by the Node B; a processor, configured to: provide scheduling commands to the user equipment device for adjusting a corresponding pointer in the user equipment device; and determine whether to provide the scheduling commands based on information up linked by the user equipment device indicating as a scheduling cell either the cell controlled by the Node B or a cell controlled by another Node B to which or from which the user equipment is being handed over in soft handover(see sections 6.3,7.1.2.5-7.1.3,7.2.4). 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6)

3GPP TR 25.896 V0.3.2. (2003-06) does not specifically disclose the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell. In an analogous art, Beyer discloses the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell (see col. 4, line 62 – col. 5, line 22; col. 17, lines 20--60). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to select a scheduling or master station to orderly use network resources, thereby maximizing resources and preventing data collisions.

As to claim 36, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses apparatus as in claim 35, wherein the processor is further configured to: synchronize to the corresponding pointer in the user equipment device the pointer in the Node B.

As to claim 37, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses apparatus, wherein the processor is further configured so that for synchronization, the pointer in the Node B is set to the

data rate used in the uplink of the information indicating the scheduling cell (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 38, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses method for use by a user equipment in soft handover from a cell controlled by a Node B to another cell controlled by another Node B, comprising: signaling in uplink information indicating one of the cells as a scheduling cell and so indicating one of the Node Bs as the scheduling Node B; and receiving from the scheduling Node B scheduling commands for controlling a pointer in the user equipment device indicating a maximum allowed data rate for uplink (see sections 6.3,7.1.2.5-7.1.3,7.2.4). 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) does not specifically disclose the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell. In an analogous art, Beyer discloses the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell (see col. 4, line 62 – col. 5, line 22; col. 17, lines 20--60). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of

the invention to select a scheduling or master station to orderly use network resources, thereby maximizing resources and preventing data collisions

As to claim 40, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses method for use by a Node B in communication with a user equipment device in soft handover to the Node B or from the Node B to another Node B, comprising: receiving in uplink from the user equipment information indicating a cell as a scheduling cell; determining whether the cell indicated as the scheduling cell is a cell controlled by the Node B; and issuing scheduling commands for controlling a pointer in the user equipment device indicating a maximum allowed data rate for uplink but only if the cell indicated as the scheduling cell is a cell controlled by the Node B (see sections 6.3, 7.1.2.5-7.1.3, 7.2.4). 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) does not specifically disclose the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell. In an analogous art, Beyer discloses the user equipment device signaling in uplink information indicating one of the cells as a scheduling cell; each Node B receiving the uplink indicating one of the cells as the scheduling cell and able to provide scheduling commands, determining whether it is in control of the scheduling cell (see col. 4, line 62 – col. 5, line 22; col. 17,

lines 20--60). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to select a scheduling or master station to orderly use network resources, thereby maximizing resources and preventing data collisions.

As to claim 42, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses system, comprising a plurality of user equipment terminals and a plurality of Node Bs, wherein each of the Node Bs includes an apparatus comprising: a pointer for indicating a maximum allowed rate of uplink to the Node B by a user equipment device located in a cell controlled by the Node B; a processor, configured to: provide scheduling commands to the user equipment device located in a cell controlled by the Node B, for adjusting a corresponding pointer in the user equipment device; and determine whether to provide the scheduling commands based on information up linked by the user equipment device indicating as a scheduling cell either the cell controlled by the Node B or a cell controlled by another Node B to which or from which the user equipment is being handed over in soft handover (see sections 7.1.1-7.1.1.3,7.3.2).

As to claim 43, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) discloses system as wherein the processor is further configured to: synchronize a pointer in the Node B to the pointer in the user equipment device, according to a synchronization procedure, and in synchronizing the pointers, the Node B pointer is either set to the data rate used in the uplink of the

information indicating the scheduling cell, or is set according to predetermined criteria, or is set to a value selected by the Node B and the Node B signals the selected value to the user equipment device (see sections 7.1.1-7.1.1.3,7.3.2).

As to claims 15-16, 20, 28 and 39 they are rejected for the same reasons as shown above in claims 1-4.

13. Claims 6-9, 17-18, 22-25 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) in view of Beyer as applied to claims 1 and 2 above, and further in view of the admitted prior art.

As to claim 7, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) disclose the method wherein according to the synchronization procedure, the Node B sets the pointer it maintains to the data rate used in the uplink of the information indicating the scheduling cell or to a predetermined value (see sections 7.1.1-7.1.1.3,7.3.2), 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) do not specify to use whichever is greater. The admitted prior art discloses that is known to use whichever is greater (see page 1, line 21-26). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to use the faster so the user can have the fastest connection available, thereby increasing user satisfaction.

As to claim 6, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) disclose the method wherein according to the synchronization procedure, the Node B sets the pointer it maintains to a value it selects (see sections 7.1.1-7.1.1.3, 7.3.2). 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) do not specifically disclose explicitly signals the value to the user equipment device. However using explicit signaling (for example: set a value of 10) is a design choice within the knowledge of one of the ordinary skill in the art, if is interested in changing the value he may explicitly use the desired value.

As to claims 8 and 9, 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Feasibility Study for Enhanced Uplink for UTRA FDD; (Release 6) 3GPP TR 25.896 V0.3.2. (2003-06) and Beyer disclose everything as explained above (see claim 1) except for the method wherein the Node B based control is provided using differential signaling. However, in the admitted prior art the applicant admits that it know to use differential signaling to control the Node B (see page 1, col. 21-29). Moreover, choosing between using differential signaling (for example: increase by a value of 10) and explicit signaling (for example: set a value of 10) is a design choice within the knowledge of one of the ordinary skill in the art, if one of the ordinary skill in the art is interested in keep track of the changes he may use differential signaling

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if is only interested in changing to the desired value he may use explicit. Both are a common and well-known technique.

As to claims 17-18 and 22-25, 41, they are rejected for the same reasons as shown in claims 6 and 8-9.

Conclusion

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/George Eng/
Supervisory Patent Examiner, Art Unit 2617

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